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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

**In re N.E. et al., Persons Coming Under the  
Juvenile Court Law.**

**SOLANO COUNTY HEALTH AND  
SOCIAL SERVICES DEPARTMENT,**

**A140598**

**Plaintiff and Respondent,**

**(Solano County  
Super. Ct. Nos.  
J42154, J42155, J42156)**

**v.**

**SANDRA P.,**

**Defendant and Appellant.**

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A.D. (stepfather) began sexually abusing his stepdaughter, N.E., when she was seven years old. When N.E. was nine years old, the juvenile court assumed jurisdiction over N.E. and her half-siblings (Welf. & Inst. Code, § 300, subds. (b), (d), (j)).<sup>1</sup> As relevant here, the court removed N.E. from Sandra P.'s (mother) custody, granted physical custody of N.E. to presumed father Gerald E. (father), and terminated dependency jurisdiction as to N.E. (§§ 361, 361.2).

<sup>1</sup> Unless noted, all further statutory references are to Welfare and Institutions Code. Stepfather is the presumed father of the half-siblings. He is not a party to this appeal and is mentioned only where necessary.

Mother appeals. She contends: (1) there was insufficient evidence N.E.'s half-siblings were at substantial risk of harm under section 300, subdivision (j); (2) the court erred by removing N.E. from her physical custody; and (3) placing N.E. with father was detrimental to N.E. We affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

N.E., mother and father's only child, was born in 2004. Mother began dating stepfather in 2006 and they married in 2008. Mother and stepfather's sons, Daniel D. and Aron D., (collectively, half-siblings) were born in 2008 and 2012, respectively. All three children lived with mother and stepfather in Los Angeles until 2009, when the family moved to Fairfield.

In August 2013, the Solano County Department of Health and Social Services (Department) filed, and later amended, a petition alleging N.E. came within section 300, subdivisions (b) and (d) because mother failed to protect N.E. from being sexually abused by stepfather. As amended, the petition alleged N.E. had been "touched in a sexually inappropriate manner by" stepfather "since she was about 7 or 8 years old." The operative petition alleged "mother has not demonstrated an ability to protect [N.E.], placing her at substantial risk of harm or illness" and mother "knew or reasonably should have known that [N.E.] was being inappropriately touched, but failed to protect [her]." Additionally, the operative petition alleged the half-siblings were "at substantial risk of harm" pursuant to section 300, subdivision (j).<sup>2</sup> The court placed the children with their maternal grandmother.

#### *Detention Report*

When N.E. was nine years old, grandmother discovered a letter N.E. wrote stating stepfather had been "touching her inappropriately" since she was seven or eight years old. N.E. told grandmother that stepfather would "enter her bedroom and would touch her . . . [he] would remove her underwear and 'do things to her.'" N.E. did not report the abuse

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<sup>2</sup> The original petition alleged father's whereabouts were unknown and he had failed to provide regular care and support for N.E. (§ 300, subd. (g)). After locating father, the Department dismissed this allegation.

because she knew mother loved stepfather. When mother learned about the letter, she did not call law enforcement. Instead, she confronted stepfather, who denied abusing N.E. Grandmother told the Department about the letter.

A social worker interviewed the family. N.E. told the social worker stepfather touched her inappropriately twice and made her feel uncomfortable and unsafe. N.E. recounted a 2012 family trip to Los Angeles, where the entire family shared a bed and stepfather “touched her inappropriately while everyone was sleeping.” In a Multi-Disciplinary Interview, N.E. disclosed stepfather “touched her inappropriately” on a family trip to Los Angeles and described how stepfather moved her half-siblings out of the way as they slept and put “his fingers in her vagina and was fondling her vagina. . . . [I]t happened again at night when they returned to their home in Fairfield.” N.E. reported “it happened frequently in Fairfield but could not state how many times . . . .” Grandmother told the social worker N.E. pointed to her private area when asked where stepfather touched her. N.E. told grandmother the inappropriate touching started when she was seven and “happened a lot.” N.E. also told grandmother about the trip to Los Angeles where the family slept in one bed and stepfather “moved her by his side and moved . . . Daniel to the wall and started touching her.”

Stepfather told the social worker he was “uncomfortable” around N.E. because she was “not [his] daughter[.]” He conceded he “gets an erection” when he wrestled with N.E. and the half-siblings and explained: “like all guys, I just think about it and it happens.” He admitted to having “grabbed [N.E.’s] ass” and stated N.E. might have “‘accidentally’ seen [ ] or touched” his erection while they wrestled. Stepfather explained, “‘off [*sic*] course I grabbed her ass what do you expect[?]” He admitted he “checked [N.E.] out” in a sexual way when she wore skirts. Later, however, stepfather denied touching N.E. in an inappropriate manner and claimed he “only touched her in a playful manner.” Stepfather blamed grandmother for “making up stories” about him.

Mother told the social worker she was “shocked” and “confused” about the allegations: she wanted to believe N.E. but had “a difficult time accepting” the information because she wanted to believe stepfather, who denied touching N.E.

inappropriately. Mother claimed grandmother did not like stepfather and may have persuaded N.E. to make the allegations. She felt the social worker misinterpreted stepfather's statement about having an erection while wrestling with the children and attributed stepfather's comments to his "'ghetto'" upbringing. Mother planned to have N.E. stay with grandmother "until things are sorted out." She requested counseling services because she felt "confused and depressed."

The family agreed to a "safety plan" where N.E. would stay with grandmother. Stepfather would move out of the family home; mother and the half-siblings would live there. The social worker opined mother could not protect N.E. "since she does not believe [N.E.'s] statements." Following a detention hearing, the court placed N.E. with grandmother and returned the half-siblings to mother, conditioned on stepfather's "sep[a]rate residency."

#### *Jurisdictional and Dispositional Reports*

In its initial jurisdictional and dispositional report, the Department urged the court to sustain the section 300 allegations and offer mother family maintenance services for the children. The Department noted mother was still unsure about whether to believe N.E.'s allegations and opined her "denial and/or inability to . . . accept the possibility that the molestation may have occurred . . . leaves [her] incapable of protecting her three children." The Department opined the half-siblings were at risk because stepfather "allegedly molested their sister and self-reported to having erections while engaged in play with them. This causes the Department great concern for the safety and welfare of these children."

After the Department located father, who lived in Los Angeles, the Department recommended placing N.E. with father and dismissing her dependency petition. The court ordered supervised visitation with N.E. so the Department could assess their relationship. During a supervised visit, N.E. happily greeted father, called him "daddy[,] and told him she loved him. The Department determined contact between father and N.E. was appropriate and nurturing. N.E. told the social worker she would be happy to live with father because he loved her and had never let anything bad happen to her. Father also

visited N.E. when he attended dependency court proceedings. The court authorized visits between father and N.E. at father's home in Los Angeles during N.E.'s school vacation.<sup>3</sup>

The Department summarized the social worker's prior interviews with family members, and attached two letters written by N.E. expressing her desire to remain in Northern California, her preference to live with her mother and half-siblings, and her belief that father had failed to "look for [her]" after she moved from Los Angeles. The Department acknowledged N.E.'s relationship with mother and the half-siblings, but determined placing N.E. with father was appropriate because: (1) father had an "established relationship" with N.E.; (2) there were no safety concerns in placing N.E. in father's care; (3) mother refused to believe stepfather could have molested N.E.; and (4) mother visited Los Angeles frequently.

#### *Combined Jurisdictional and Dispositional Hearing*

Mother submitted to the section 300, subdivision (b) and (d) allegations and the court heard testimony on the section 300, subdivision (j) allegation and disposition.

The social worker testified stepfather presented a risk to all of the children because he did not understand why it was unacceptable to have an erection while playing with them. The social worker was concerned mother might allow stepfather to have contact with N.E. because mother was financially dependent on him. As the social worker explained, stepfather's name was on the lease to the family home and he paid the rent. He also wanted to move back into the home. The social worker recommended placing N.E. with father. She acknowledged N.E. had lived with mother for the last several years, was attached to her half-siblings and loved them, and preferred to live with mother. The social worker opined the transition could be difficult for N.E., and that N.E. might be sad to leave her mother and half-siblings. According to the social worker, however, any sadness N.E. might feel did not constitute a substantial risk of detriment to her health, safety, or

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<sup>3</sup> The Department assessed father's home, which appeared to be safe "with no concerns" other than there were many family members residing in the residence. The Department opined father's 2010 conviction for a "wet and reckless" would not pose a safety concern for N.E.

well-being. As the social worker explained, mother frequently visited Los Angeles and father had a plan for N.E. to attend school, receive counseling and medical care, and to visit her maternal family.

Mother testified about her problematic relationship with father and his infrequent contact with N.E. after the family moved to Fairfield. She conceded, however, that she had sole legal and physical custody of N.E. beginning in 2007 and that father was not awarded visitation when the family moved to Fairfield. Mother also admitted N.E. expressed a desire to see father regularly and have a relationship with him. According to mother, N.E. wanted to live with mother and her half-siblings; living with father was N.E.'s third choice. Mother would protect N.E. from stepfather by "[n]ot allowing him to come back to [the] house" or by moving to grandparents' house. She had not obtained a restraining order against stepfather but she would if N.E. were returned to her custody. She had not divorced stepfather because she did not "have the money to do it."

Father testified he called or texted N.E. about once a month after N.E. moved to Fairfield. He was unaware of the 2007 change of custody order and was sometimes unable to visit N.E. because mother did not contact him about visits. N.E. told father she did not want to move to Los Angeles, but she appeared happy and comfortable in his home. Father had a plan to care for N.E. and was prepared to facilitate contact between N.E. and her maternal family.

### *The Court's Order*

At the conclusion of the combined hearing, the court sustained the section 300, subdivision (j) allegations involving the half-siblings. The court determined there was a substantial risk to the half-siblings because: (1) N.E. and the half-siblings resided in the same home; (2) the abuse of N.E. occurred over an extended period of time and stepfather's behavior was "particularly aggravating[;]" (3) stepfather admitted engaging in sexually inappropriate behavior with all three children and failed to acknowledge its inappropriateness; and (4) mother failed to accept stepfather's "aggravated behavior[.]" The court authorized the half-siblings to remain in mother's care with family maintenance services.

The court declined to return N.E. to mother's care because mother had "not progressed . . . along in her treatment and acceptance of [N.E.'s] victimization to the point where she can safely care for [N.E.]" The court considered N.E.'s preference for living with mother but concluded it would not be detrimental to place N.E. with father in part because father cared about N.E.'s "relationship to [mother]. He seems to genuinely care for doing what is in [N.E.'s] best interest." The court "acknowledg[ed] the difficulty" for N.E., but noted she was a "resilient young girl who can respond appropriately to these circumstances and thrive under the care of [father]." As relevant here, the court granted physical custody of N.E. to father, authorized "ancillary services" to mother and N.E., and terminated dependency jurisdiction as to N.E.

## DISCUSSION

Mother challenges the court's jurisdictional findings regarding the half-siblings and the dispositional order regarding N.E.

### I.

#### *Substantial Evidence Supports the Jurisdictional Order*

Mother challenges the court's findings that the half-siblings came within section 300, subdivision (j). "Section 300, subdivision (j) provides jurisdiction where there is evidence that '[t]he child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions.'" In evaluating whether there is substantial evidence of abuse, the juvenile court "consider[s] the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child." [Citation.] "In determining whether the child is in present need of the juvenile court's protection, the court may consider past events." [Citation.] (*In re Francisco D.* (2014) 230 Cal.App.4th 73, 80-81 (*Francisco D.*)). We review the court's jurisdictional findings for substantial evidence, reviewing the record in the light most favorable to the

court's determination and drawing all reasonable inferences in favor of the court's ruling. (*Id.* at p. 82.)

*In re I.J.* (2013) 56 Cal.4th 766, 774 (*I.J.*) — where the California Supreme Court held sexual abuse of a daughter may support jurisdiction for a son under section 300, subdivision (j) — is instructive. There, the father of five children, including twin 12-year-old boys and a seven-year-old boy, raped his 14-year-old daughter and fondled and digitally penetrated her vagina. There was no evidence the father sexually abused his sons, nor any evidence the sons were aware of or had witnessed the abuse. (*Id.* at pp. 773, 778.) The juvenile court assumed jurisdiction over all five children — including father's three sons — under section 300, subdivision (j). (*I.J.*, at p. 771.)

Our high court explained that to determine whether a risk is substantial under section 300, subdivision (j) “the court must consider both the likelihood that harm will occur and the magnitude of potential harm . . . .’ [Citation.] . . . [T]he more severe the type of sibling abuse, the lower the required probability of the child’s experiencing such abuse to conclude the child is at a substantial risk of abuse or neglect under section 300. If the sibling abuse is relatively minor, the court might reasonably find insubstantial a risk the child will be similarly abused; but as the abuse becomes more serious, it becomes more necessary to protect the child from even a relatively low probability of that abuse.” (*I.J.*, *supra*, 56 Cal.4th at p. 778.) Considering these factors, the *I.J.* court affirmed the section 300, subdivision (j) jurisdictional finding, concluding “[t]he serious and prolonged nature of father’s sexual abuse of his daughter under these circumstances support[ed] the juvenile court’s finding that the risk of abuse was substantial as to all the children.” (*Ibid.*)

Here, stepfather began sexually abusing N.E. when she was seven years old, on a family trip to Los Angeles. He put “his fingers in her vagina” and fondled it while the half-siblings slept in the same bed. Stepfather continued to molest N.E. “a lot” when the family returned to Fairfield. He also grabbed N.E.’s buttocks while roughhousing with her and had an erection N.E. may have touched. Additionally, father “checked [N.E.] out” in a sexual way without recognizing the inappropriateness of his behavior. Under



the circumstances, we have no trouble concluding this abuse was “serious and prolonged.” (*I.J.*, *supra*, 56 Cal.4th at p. 778; see also *In re P.A.* (2006) 144 Cal.App.4th 1339, 1345, 1347 [father’s touching of daughter’s vagina provided basis for jurisdiction over his sons]; see also *In re Karen R.* (2001) 95 Cal.App.4th 84, 90.)

Additionally, the probability of abuse of the half-siblings was not “relatively low” (*I.J.*, *supra*, 56 Cal.4th at p. 778) because: (1) the half-siblings were present on at least one occasion when stepfather molested N.E.; (2) stepfather had an erection while wrestling with the half-siblings; (3) stepfather failed to understand why his behavior was inappropriate; (4) one half-sibling, Daniel D., was approaching the age at which stepfather began abusing N.E.; (5) mother failed to accept that stepfather had abused N.E.; and (6) mother was financially dependent on stepfather, who desired to move back into the family home. Under the circumstances, the court “‘reasonably could conclude every minor in the home, regardless of gender, was in substantial danger of sexual abuse by father.’ [Citation.]” (*Id.* at p. 775.)

Mother does not persuade us the court erred by assuming jurisdiction over the half-siblings pursuant to section 300, subdivision (j). The court considered the proper factors under section 300, subdivision (j), judged the credibility of the witnesses, and determined the half-siblings were at substantial risk of harm under section 300. As we have explained, the court’s findings are “supported by the record before us and clearly within the province of the trial court.” (*Francisco D.*, *supra*, 230 Cal.App.4th at p. 82.) We therefore affirm the court’s finding of jurisdiction over the half-siblings under section 300, subdivision (j).

## II.

### *Substantial Evidence Supports the Dispositional Order Removing N.E. from Mother’s Custody*

Next, mother challenges the sufficiency of the evidence supporting the dispositional order removing N.E. from her custody. Under section 361, subdivision (c)(1), a dependent child shall not be removed from the custodial parent unless the juvenile court finds by clear and convincing evidence “[t]here is or would be a substantial

danger” to a minor’s “health, safety, protection, or physical or emotional well-being . . . if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s . . . physical custody.” (§ 361, subd. (c)(1).) Under section 361, subdivision (c)(4), a child may be removed from a parent’s custody if there is clear and convincing evidence “the [child] has been sexually abused, or is . . . at substantial risk of sexual abuse by a [member] of [the child’s] household, . . . and there are no reasonable means by which the minor can be protected from further sexual abuse . . . without removing the minor from . . . her parent. . . .” (§ 361, subd. (c)(4).) We review the court’s dispositional order for substantial evidence. (*In re Noe F.* (2013) 213 Cal.App.4th 358, 367.)

Here, the court concluded there were no reasonable means to protect N.E. without removing her from mother’s custody because mother had not accepted N.E.’s “victimization to the point where she can safely care for [N.E.].” Substantial evidence supports this conclusion. At the dispositional hearing, mother — who was financially dependent on stepfather — had not sought a restraining order against stepfather or initiated divorce proceedings. Removing stepfather from the family home did not protect N.E. from the risk of sexual abuse because stepfather’s name was still on the lease agreement, he paid rent on the family home, and he wanted to return to the house. Moreover, and perhaps most importantly, mother had not accepted what stepfather had done to N.E. In light of this evidence, the juvenile court properly rejected mother’s claim that she was “able to protect” N.E. from stepfather and removed N.E. from mother’s custody. (*In re N.M.* (2011) 197 Cal.App.4th 159, 170 [minor’s removal from father’s home was necessary where father was “in denial regarding the reported incidents of physical abuse” involving mother].)

### III.

#### *Substantial Evidence Supports the Dispositional Order Granting Physical Custody of N.E. to Father and Terminating Dependency Jurisdiction*

Mother's final claim is placing N.E. with father was detrimental to N.E. If the juvenile court orders a minor removed from the custodial parent's home, and there is a noncustodial parent who desires to assume custody of the minor, the court must place the minor with the noncustodial parent unless doing so would be detrimental to the minor's safety, protection, or physical or emotional well-being. (§ 361.2, subd. (a); *In re Austin P.* (2004) 118 Cal.App.4th 1124, 1132.) Here, the court determined father was a noncustodial parent who desired to assume custody of N.E. and that placing N.E. with father would not be detrimental to her. The court ordered father to become N.E.'s physical custodian and terminated dependency jurisdiction as to N.E. (§ 361.2, subd. (b)(1)). We review this ruling for substantial evidence. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426-1427.)

Mother acknowledges the substantial evidence standard of review applies in reviewing the detriment finding under section 361.2, but she focuses solely on the evidence favorable to her position. This approach is misguided. When reviewing the court's order for substantial evidence, we do not search the record for evidence that would support a different result than that reached by the juvenile court. Instead, we look for evidence supporting the result *actually* reached by the lower court. (*In re Daniel C.H.* (1990) 220 Cal.App.3d 814, 839; *In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581.) "The fundamental issue in proceedings under section 361.2 is which parent has the best potential to provide a safe and secure permanent home for the minor. [Citation.]" (*In re A.B.* (2014) 230 Cal.App.4th 1420, 1437.) Here, the juvenile court evaluated all of the circumstances — including N.E.'s preference to live with mother and her love for her half-siblings — and reasonably concluded father was the parent with the greatest "potential to provide a safe and secure permanent home for" N.E. (*Ibid.*) At the dispositional hearing, the evidence established: (1) N.E. wanted to see her father and have a relationship with him; (2) father had experience parenting and a safe home; (3) father

loved N.E., acted in her best interest, and behaved appropriately toward her; and (4) father made plans for N.E. to attend school, receive medical care and counseling, and visit her maternal family. We conclude substantial evidence supports the court’s conclusion that placing N.E. with father would not be detrimental to N.E. (*In re Nickolas T.* (2013) 217 Cal.App.4th 1492, 1504-1505.)<sup>4</sup>

#### DISPOSITION

The juvenile court’s jurisdictional and dispositional orders are affirmed.

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Jones, P.J.

We concur:

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Simons, J.

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Needham, J.

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<sup>4</sup> We reject mother’s contention that the court erred by declining to provide her with family reunification services “and periodic review of custody.” Mother has not demonstrated the court abused its discretion by denying her services pursuant to section 361.2, subdivision (b)(3). (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1179.)